IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 16208 of 2007(D)

OS.204/2004 of MUNSIFF COURT, MAVELIKKARA

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PETITIONER:

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1. V.SIVARAMAN, SWAMY SADANAM,
   VARENICKAL MURI, THEKKEKKARA VILLAGE,
   KURATHIKAD P.O.

2. N.PARAMESWARAN NAIR, LEKSHMI SADANAM,
   VARENICKAL MURI, THEKKEKARA VILLAGE.

3. JAYASREE MADHUSOODANAN PILLAI,
   MAYAPPAYIL VEEDU, KOMALLOOR MURI,
   CHUNAKKARA.

BY ADV. SRI.N.D.PREMACHANDRAN
SRI.D.AJITHKUMAR

RESPONDENTS:

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1. MOHANAN, ALINTEVADAKKETHIL,
   THEKKEKARA P.O., THEKKEKARA VILLAGE.

2. PARVATHI, W/O KRISHNAN,
   ALINTEVADAKKETHIL, THEKKEKARA P.O.,
   THEKKEKARA VILLAGE.

3. SUNILKUMAR, S/O SARASIJAN,
   KOMALATHU, KATTACHIRAMURI, PALLICKAL P.O.,
   BHARANIKKAVU VILLAGE.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: COPY OF THE PLAINT IN O.S. NO: 204/2004

EXT.P2: A COPY OF THE ORDER IN O.S.204/04 DT. 13.4.2007 OF THE MUNSIFF COURT, MAVELIKKARA

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 16208 OF 2007 D

Dated this the 9th July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the learned Munsiff, Mavelikkara dated 13.4.2007 in O.S.204/04. It is submitted that the suit is one for a declaration that the sale deed No: 2857 dated 27.11.2003 is a fraudulent one and it is void and for allowing the plaintiffs to realise the cost from the defendants and their assets. So, virtually the plaintiffs are praying for a declaratory decree with respect to a sale deed. The trial court proceeded as if the property is to be valued under Section 40 of the Court Fees & Suits Valuation Act 1959 under the impression that the document is to be set aside. It is for the plaintiffs to decide whether a document has to be declared as null and void or a document has to be set aside. If a prayer for setting aside the document is not maintainable it is for the court to consider at the appropriate stage. Therefore, the finding of the court below that the plaintiffs have to pay court fee under Section 40 of the Court Fees Act, to set aside the document is not correct and is liable to be interfered with. Now the question to be considered is under which provision the plaintiffs have to pay court fee in this

case. Learned counsel for the petitioners would argue before me that it will be Section 25(b) of the Act that will be applicable. A bare reading of Section 25(b) itself would reveal that unless there is a prayer for consequential injunction along with the prayer for a declaration Section 25(b) will not be attracted. Section 25(a) is also not attracted because there is no prayer for declaration and possession. So, such cases are governed by Section 25(d) of the Court Fees Act. Section 25(d)(i) deals with a situation where the property is capable of valuation, fee has to be computed on the market value of the property and where the relief sought for is with reference to immovable property. Here the declaratory relief is with respect to a document relating to the property to be declared as void. So, the subject matter is the property which is capable of valuation. Therefore it will be Section 25(d)(i) that will be squarely applicable to the facts of this case. Therefore the writ petition is disposed of and the order under challenge is set aside and the plaintiffs are directed to pay court fee under Section 25(d)(i) of the Court Fees Act by incorporating appropriate amendment with respect to the provision of law under which court fee is paid and also the valuation of the property in accordance with Section 25(d)(i) of the Court

Fees & Suits Valuation Act, 1959.

M.N.KRISHNAN
Judge

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